(2007) 08 JH CK 0084

In the Jharkhand High Court

Case No : Criminal Appeal No. 173 of 2000 (R)

Ram Rekha Sao and Another APPELLANT

Vs

State of Bihar (now Jharkhand) RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Essential Commodities Act, 1955 — Section 3(2), 7

Citation : (2011) 1 JCR 474

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The present appeal is directed against the judgment of conviction u/s 7 of the E.C. Act for violation of the provisions of Bihar Trade Articles (Licenses Unification) Order, 1984 passed by Sri S.N. Singh, Special Judge (E.C. Act), Gumla in G.R. No. 6 of 1993 whereby and where under both the Appellants were sentenced to undergo rigorous imprisonment for six months each.

2. The prosecution case as it stands narrated giving rise to Gumla P.S. Case No. 96 of 1993 was that the informant Md. Shafique, Supply Inspector on 11.5.1993 visited the business premises of the Appellant No. 1 Ram Rekha Sao with the Assistant District Supply Officer, Gumla in the noon and found Ram Rekha Sao with his son Appellant No. 2, Ashok Kumar Gupta there. The visiting party found that the display board of the commodity was bearing the date of 20.4.1993 and the stock position was not up date to which a true copy of the contents of display board was prepared in presence of the Appellant Ram Rekha Sao.

Thereafter, the party verified the storage in the interior part of the shop and found the following in two rooms:

(i) Rice-32 Quintals 10 K.G.-in 33 bags

(ii) Pulse-9 Quintals 20 K.G.-in 11 bags

(iii) Refined flour (Maida)-10 Quintals 40 K.G.-in 12 bags

(iv) Suji-50 K.G.-in 1 bag

(v) Gram-3 Quintals 5 K.G.-in 5 bags

(vi) Mustard Oil-1 Quintal 80 K.G.-12 containers

(vii) Vegetable Oil-1 Quintal 50 K.G. -in 10 containers (tins)

(viii) Refined Oil-1 Quintal 5 K.G.-in 7 containers (tins)

(ix) Karanz Oil-1 Quaintal 80 K.G.-in 12 containers (tins)

3. It was alleged that on demand the Appellants failed to produce any license for dealing in food articles and edible oil including the cash memo of purchase and the stock register, yet the Appellants explained that they were neither licensee nor they had applied for license for dealing in food articles and edible oils.

4. The informant, therefore, found prima facie that the aforesaid storage was in violation of Clause 18(ii) of the Bihar Trade Articles (Licenses Unification) Order, 1984 and that there was violation of Clauses 3(a)(b), 4(c) and 7 of the Bihar Essential Articles (Display of Prices and Stocks) Order, 1977.

5. The informant explained that since the aforesaid stocks of food (sic--articles?) and edible oil were not in a position to remove, the same were given in the possession (custody) of the Appellant No. 2 Ashok Kumar Gupta on his undertaking in writing. Sanction was obtained from the Sub-Divisional Officer (Sadar) for prosecution of the Appellants under Clause 6(c) of the Bihar Essential Articles (Display of Prices and Stocks) Order, 1977 and it was requested to proceed against the Appellants u/s 7 of the Essential Commodities Act, 1955. The case was instituted after two days on 13.5.1993.

6. The police after investigation submitted charge-sheet for the offence u/s 7 of the E.C. Act against both the Appellants.

7. The substance of accusation was explained to the Appellants that they violated the provisions of (i) Clause 2 of Bihar Trade Articles (Licenses Unification) Order, (ii) Section 7(1)(a)(i) read with Section 3(2)(1) of the E.C. Act, and (iii) Section 18 of the Licences Unification Order to which the Appellants pleaded not guilty and claimed to be tried.

8. Assailing the impugned judgment, the learned Counsel submitted that the substance of accusation explained to the Appellants by the trial Court on 9.9.1993 does not constitute contravention of any control order SO as to attract any penal consequences under the Essential Commodities Act and it was nowhere disclosed by explaining accusation that the act of the Appellants amounted to any specific offence. Therefore, the Appellants were prejudiced for the error in the aforesaid accusation and on this score alone the entire criminal prosecution as launched against the Appellants is liable to be set aside.

9. Advancing his argument the learned Counsel submitted that Clause (ii) of the Unification Order deals with definitions of various words and phrases including the word ''retail dealer'' which means a person engaged in the business of purchase, sale or storage of any article other than personal consumption within storage limits fixed by the Government from time to time. The Government of Bihar fixed the storage limits vide Notification No. G.S.R. 49 dated 17th October, 1985 with the prior concurrence of the Central Government in the following manner :

The retail dealer of food grains means a person, who at a time holds stock of any quantity of food grain of one or all types taken together for purchase, sale or storage for purposes other than personal consumption, exceeding 30 Quintals but not exceeding 100 Quintals.

Similarly by the said Notification in Item No. 6(b) the storage limit has been prescribed in respect of edible oils which runs thus:

The retail dealer of edible oils in "C" class cities, towns and rural areas means a person, who at any time holds stock of anyone or all edible oils taken together including hydrogenated vegetable oil for purchase, sale or storage for purposes other than personal consumption in a quantity exceeding 1.50 quintals but not exceeding 10 quintals.

10. In the present appeal the Appellant No. 1 Ram Rekha Sao and the Appellant No. 2 Ashok Kumar Gupta are admittedly father and son living under the common roof but having different business. The Appellant No. 1 is admittedly retailer having marginal business of food grains whereas the witnesses are consistent in respect of the Appellant No. 2 that he was a Hawker, who used to carry food grains and edible oils for sale to the different village markets. The informant (PW 4) admitted that food articles were recovered from two rooms situated in the rear portion of the shop and it was not shown as to from which room how much articles were recovered. The Informant, Supply Inspector admitted that neither Karanj nor Karanj Oil comes within the storage limit. Similarly the Investigating Officer admitted that during the investigation of the case, photocopies of the cash memos issued by the wholesale dealers were produced before him which were issued in the name of Appellant No. 2 Ashok Kumar Gupta. Such receipts were produced in the Court and marked for identification and it indicated that the Appellant No. 2 Ashok Kumar Gupta had separate retail business of food articles. The Investigating Officer further admitted the fact that the Appellant No. 1 Ram Rekha Sao and his son Ashok Kumar Gupta had their separate business. The defence witnesses produced on behalf of the Appellants proved different cash memos issued by the wholesale dealers in the separate names of the Appellants which indicated that the Appellants used to purchase food articles for their separate business.

11. I find that the trial Judge disbelieved the separation of the business between the Appellants only on the ground that they had not taken their defence when

they were examined and their statements were recorded u/s 313 of the Code of Criminal Procedure. I find and hold that the trial Court below grossly erred in arriving at such conclusion ignoring the material evidence on record and even on admission of the prosecution witnesses. This fact has been admitted by the Informant Supply Inspector as well as the Investigating Officer of the case besides the witnesses produced on be-half of the defence.

12. The trial Court observed that total quantity of seized articles, as per weighment chart, was 61.85 Quintals and if the quantity of Karanj oil of 1.80 Quintals deducted, the total essential commodities articles came to 60.05 quintals, whereas storage limit prescribed at the relevant time was not more than 30 Quintals. The trial Court further grossly erred by not dividing the total stock of 60.05 Quintals equally between the Appellants. I find that the prosecution failed to prove that the food articles were recovered from the joint business and joint possession of the Appellants. On the other hand it has been proved that the Appellants have their different mode of retail business of food articles. The weighment chart of food articles recovered in total indicated 60.05 Quintals after excluding the weight of Karanz oil and on equal division of the stocks as per above finding the share of each of the Appellants comes to 30.025 Quintals. In my view 2.5 KG of in excess of the limitation, in the facts and circumstances of the case may be ignored in view of the facts that the weight of the containers (tins) and gunny bags were not reduced while assessing the total weight of the stock of the food articles. I am, therefore, of the view that the prosecution failed to prove that the Appellants contravened the provisions of Bihar Trade Articles (Licenses Unification) Order, 1984 as framed u/s 3 of the Essential Commodities Act, 1955 so as to attract punishment u/s 7 of the said Act.

13. I, therefore, find and hold that the conviction of the Appellants u/s 7 of the E.C. Act and sentence thereto passed against them is unsustainable under the law, which is liable to be set aside.

14. In the result, this appeal is allowed and bail bonds of the Appellants stands discharged. Appeal allowed.